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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,339	11/03/2003	Thomas A. Chodacki	57119 (72011)	5244
7590 06/20/2005			EXAMINER	
EDWARDS & ANGELL, LLP			PRICE, CARL D	
P.O. Box 9169			ART UNIT	
Boston, MA 02209			PAPER NUMBER	
			3749	
DATE MAILED: 06/20/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/700,339	CHODACKI ET AL.	
	Examiner	Art Unit	
	CARL D. PRICE	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>05-11-2005</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

The indicated allowability of claims 4-5 and 7 is withdrawn in view of the newly discovered reference(s) to **US003589846 (Place)**. Rejections based on the newly cited reference(s) follow.

Claim Objections

Claims 1 (line 5) and 15 (line 5) are objected to because of the following informalities:

- The term "tom" should be - - to - -.

Appropriate correction is required.

Duplicate Claims

Applicant is advised that should claims **4 and 7**, respectively, be found allowable, claims **15 and 14**, respectively, will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6, 7-12, 14, 16-19: Rejected under 35 U.S.C. 102(b)

Claims 1-3, 6, 7-12, 14 and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by **US003589846 (Place)**.

US003589846 (Place) shows and discloses gas control system that:

- controls energizing an ceramic electric resistance igniter (23) from a power source;
- a switching mechanism (42,52) connected between the electric resistance igniter and the power (L1, l2);
- the electric resistance igniter responsive to an input signal from door and timer switches (42, 49);
- wherein the control device controls operation of the electric resistance igniter (23) so as to warm-up the electric resistance igniter to a temperature at or above an ignition temperature for a gas being combusted; and
- wherein following successful ignition of the gas, operation of the electric resistance igniter is controlled so the electric resistance igniter is at a temperature less than the gas ignition temperature so the electric resistance igniter can be re-heated so as to re-ignite the gas within a desired re-ignition

time period. In this regard US003589846 (Place) discloses (see column 5, lines 28-34).

“If ignition occurs properly, sufficient heat is radiated by the flame and the igniter 23 to hold the switch 58 open. In the illustrate embodiment, the igniter drops to about 1000⁰ F, when equilibrium is reached after ignition occurs. This temperature is maintained in the igniter by the presence of the flame and the low voltage applied to the igniter.”

Since the temperature igniter is maintained at about 1000⁰ F (i.e. – a predetermined temperature) the time required to reheat the electric resistance igniter from the predetermined temperature to a minimum temperature required for ignition of the gas, would be necessarily, or inherently, less than a desired time period (i.e. – the time required to heat the electric resistance igniter from the ambient, or room, temperature, to a minimum temperature required for ignition) for re-ignition.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 5, 13, 15, 20: Rejected under 35 U.S.C. 103(a)

Claims 4, 5, 13, 15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US003589846 (Place) in view of EP000385910B1.

US003589846 (PLACE) shows and discloses the invention substantially as set forth in the claims with possible exception to the control device including:

- a micro-controller and an applications program for execution in the micro-controller including instructions and criteria for outputting control signals to the switching mechanism to selectively control voltage and current being applied to the electric resistance igniter; and
- the desired re-ignition time period is about four seconds or less.

EP000385910B1 teaches, from the same appliance control field of endeavor as **US003589846 (Place)**, using a micro-controller (M1) and an applications program for execution in the micro-controller including instructions and criteria for outputting control signals to a switching mechanism to selectively control voltage and current being applied to an electric resistance igniter.

In regard to claims 4, 5, 13, 15 and 20, for the purpose of providing a suitable means for selectively controlling, operating and monitoring the electric resistance igniter of **US003589846 (Place)**, it would have been obvious to a person having ordinary skill in the art to modify the controller of **US003589846 (Place)** to include a micro-controller and an applications program for execution in the micro-controller including instructions and criteria for outputting control signals to a switching mechanism to selectively control voltage and current being applied to an electric resistance igniter, in view of the teaching of **EP000385910B1**. In regard to claim 13, in particular, since the actual warm-up time for a given appliance control application would necessarily depend on numerous design parameters such as the type and amount of fuel burned,

Art Unit: 3749

the size and type of resistance igniter, the overall size and shape of the burner, etc., to operate **US003589846 (Place)** such that the desired re-ignition time period is about four seconds or less can be viewed as nothing more than merely a matter of choice in design absent the showing of any new or unexpected results produced therefrom over the prior art of record.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-20 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-33 of copending Application No. 10/090,450. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows:

- a control system that controls energizing an electric resistance igniter from a power source;

Art Unit: 3749

- a switching mechanism connected between the electric resistance igniter and the power;
- the electric resistance igniter responsive to an input signal from door and timer switches;
- wherein the control device controls operation of the electric resistance igniter so as to warm-up the electric resistance igniter to a temperature at or above an ignition temperature for a gas being combusted; and
- wherein following successful ignition of the gas, operation of the electric resistance igniter is controlled so the electric resistance igniter is at a temperature less than the gas ignition temperature so the electric resistance igniter can be re-heated so as to re-ignite the gas within a desired re-ignition time period;
- a micro-controller and an applications program for execution in the micro-controller including instructions and criteria for outputting control signals to the switching mechanism to selectively control voltage and current being applied to the electric resistance igniter.

Conclusion

See the attached USPTO form 892 for prior art made of record and not relied upon which is considered pertinent to applicant's disclosure.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Carl D. Price', with a stylized flourish at the end.

CARL D. PRICE
Primary Examiner
Art Unit 3749

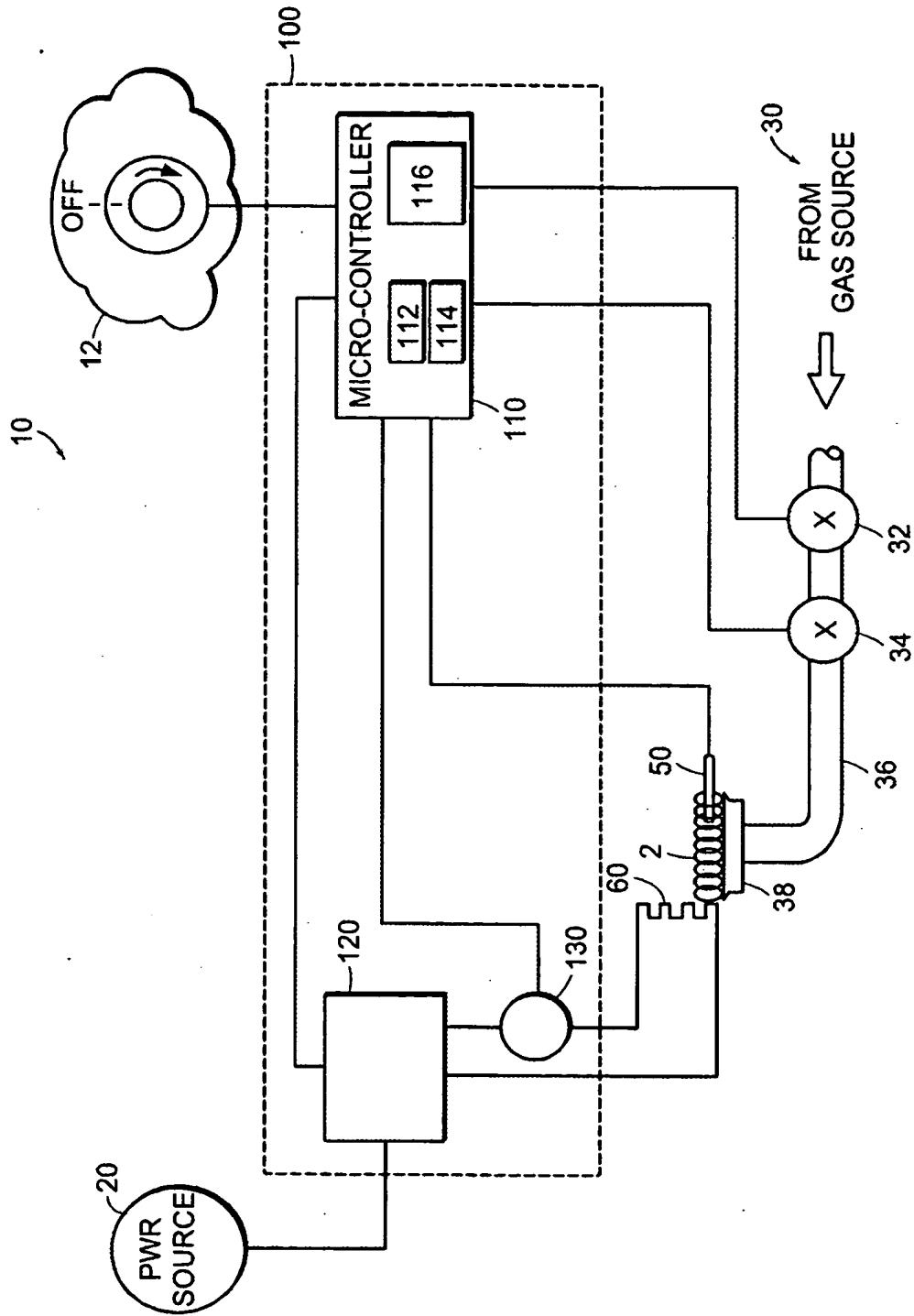


FIG. 1

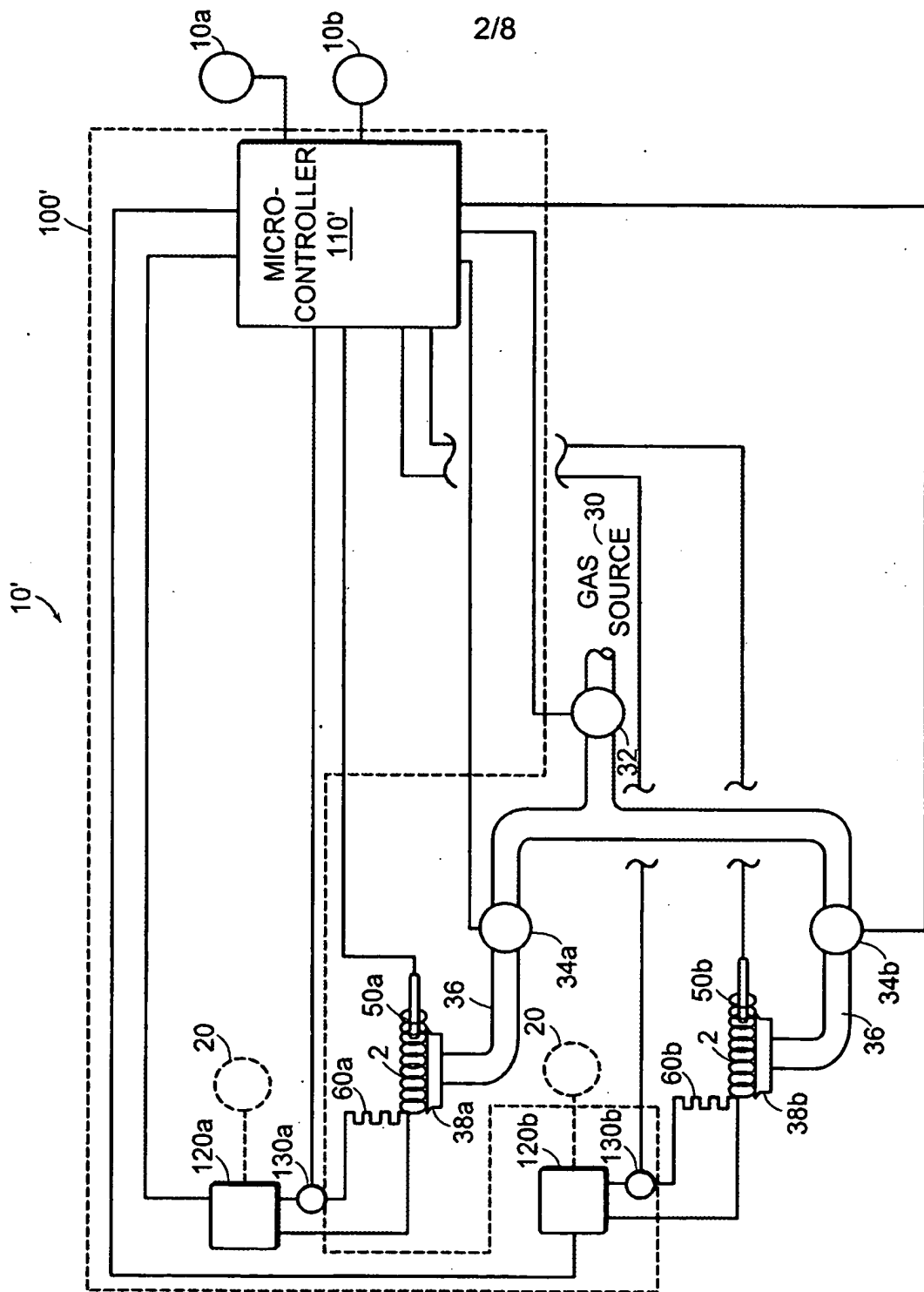


FIG. 2

3/8

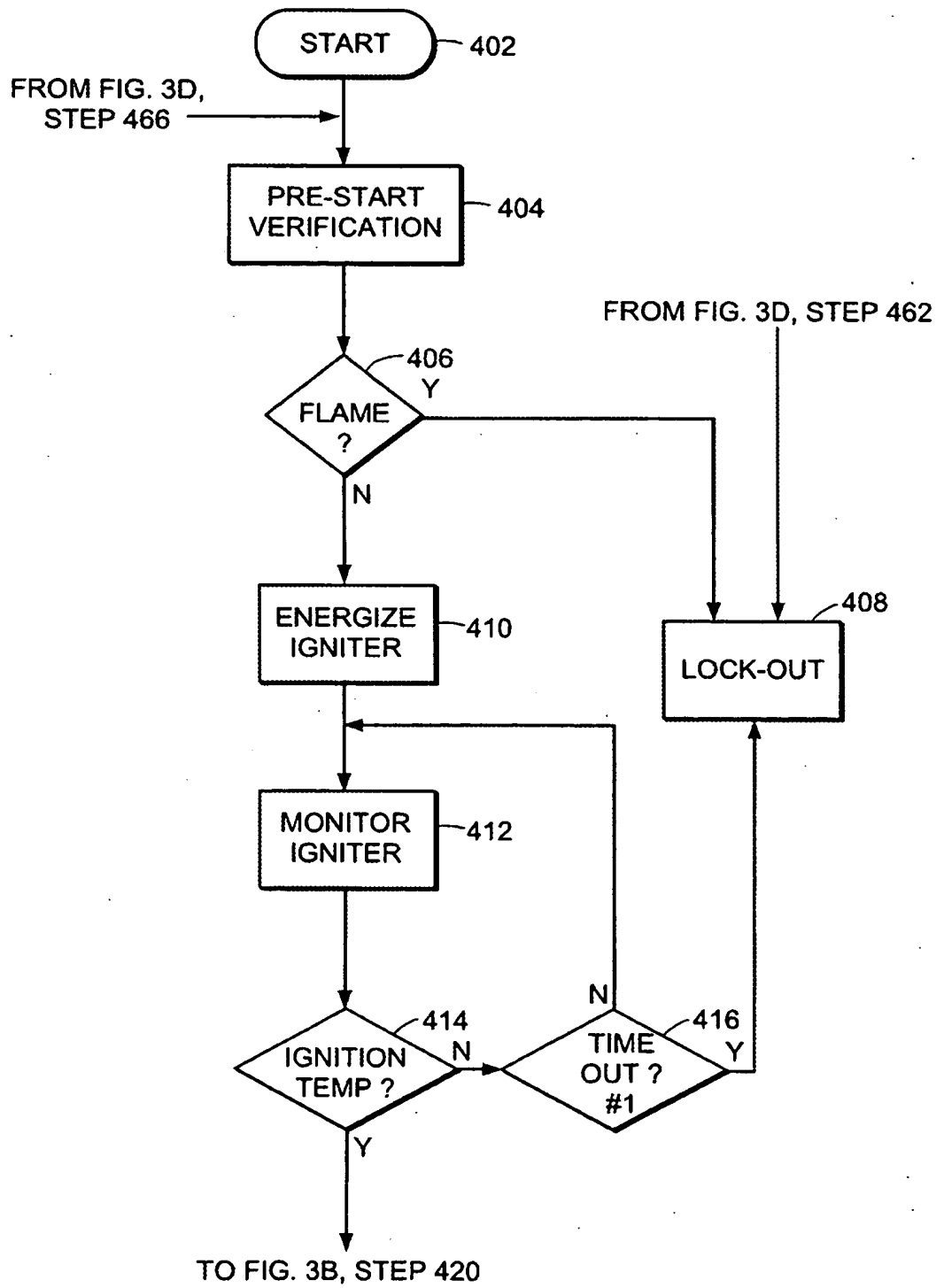


FIG. 3A

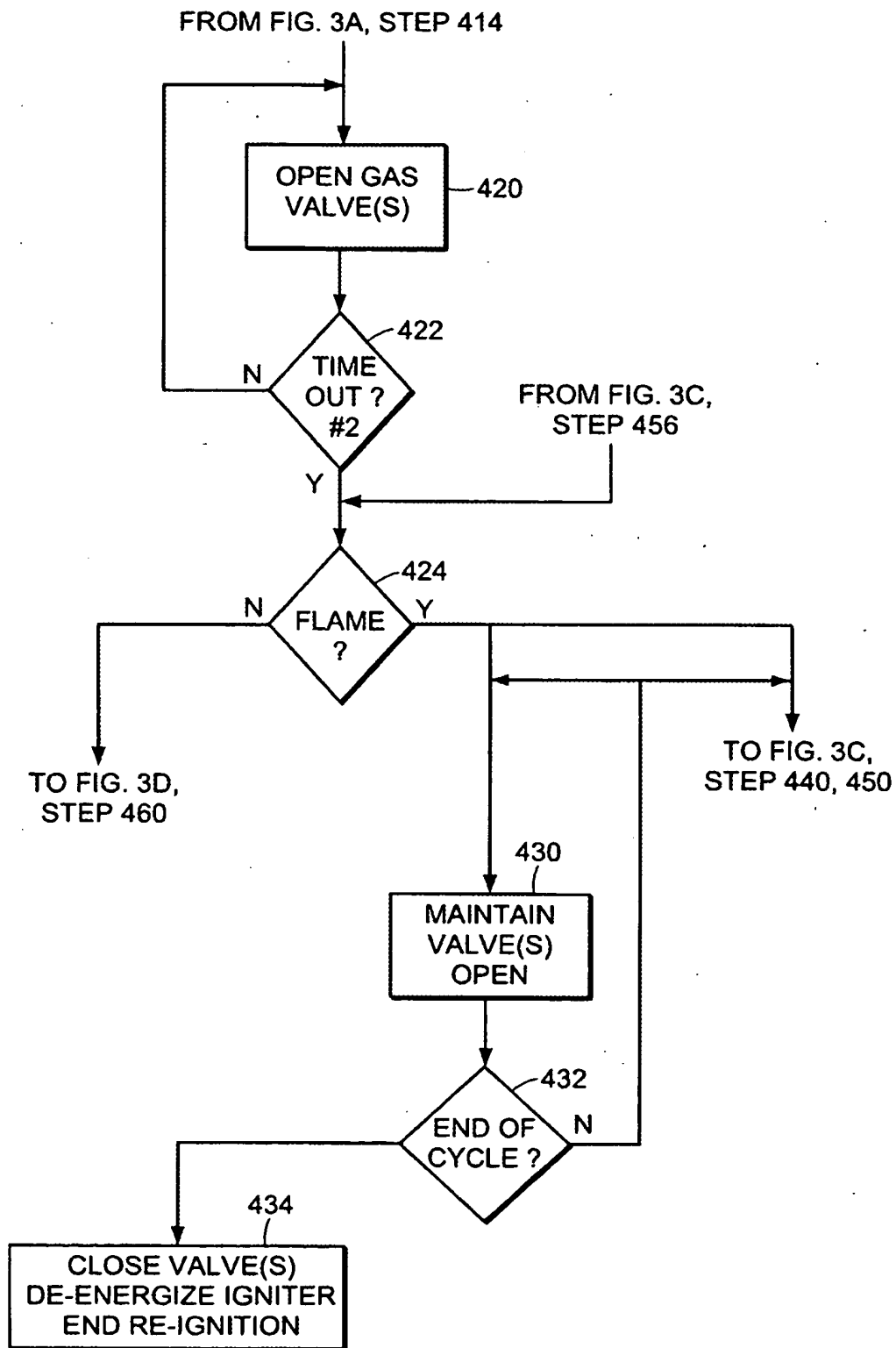


FIG. 3B

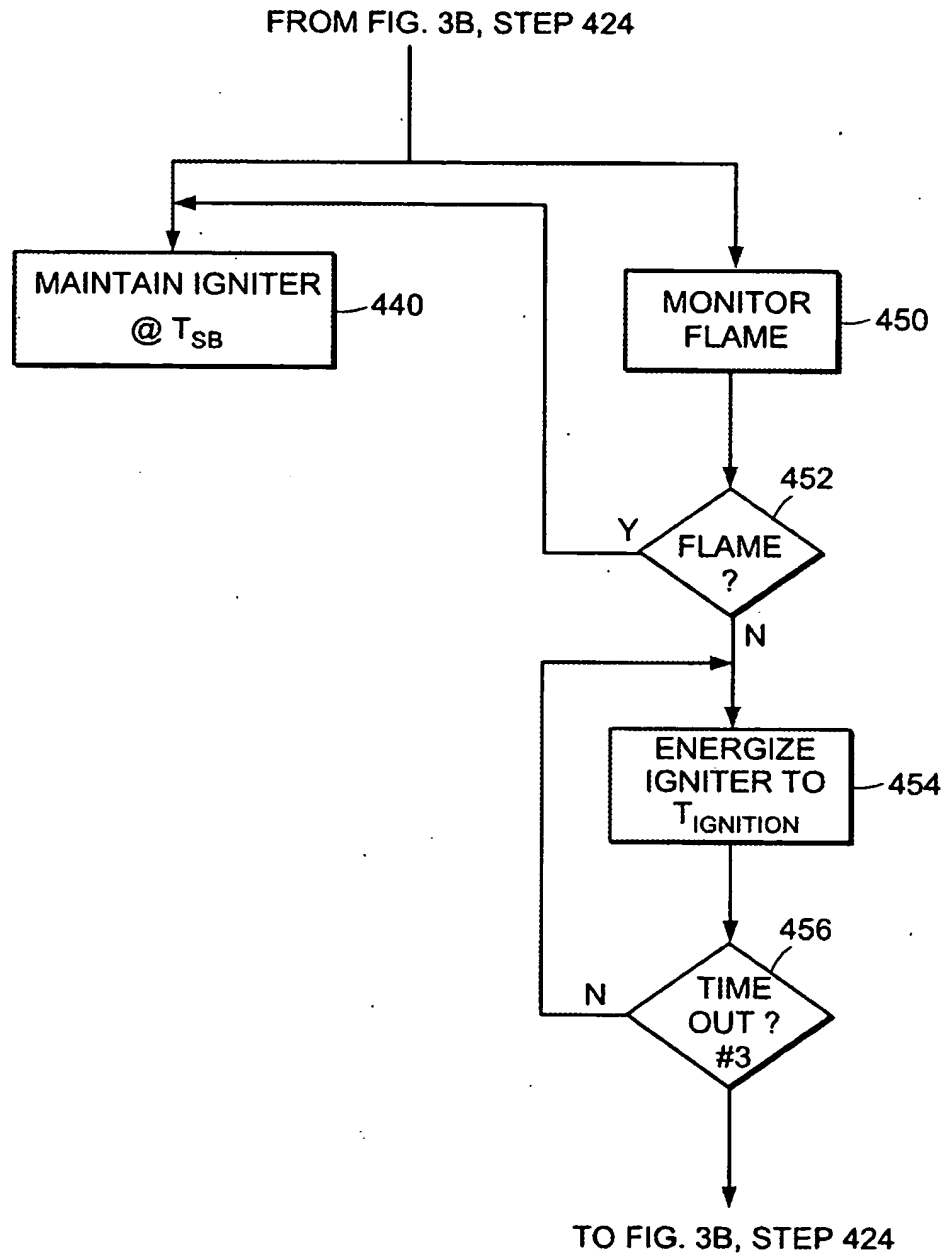


FIG. 3C

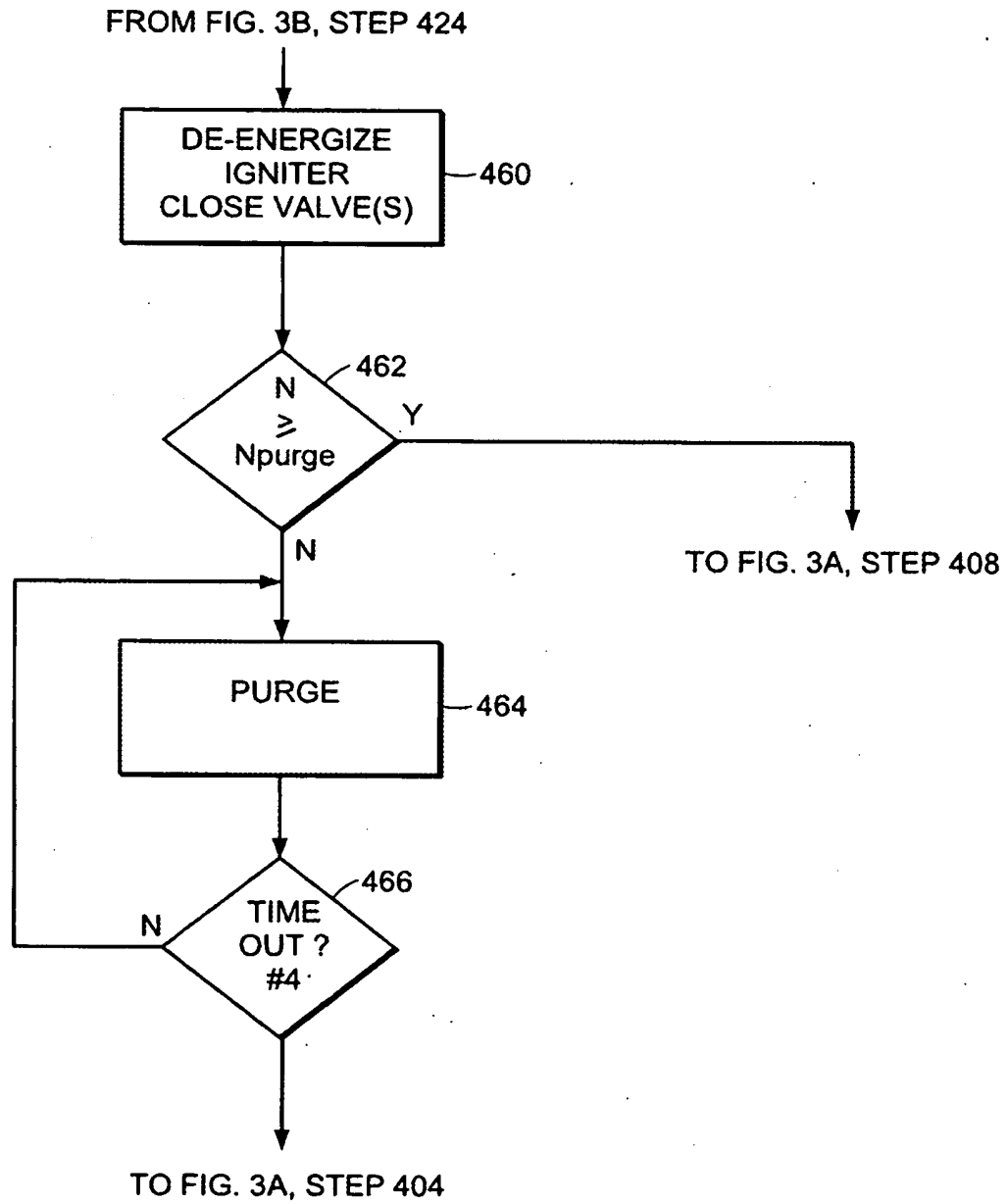


FIG. 3D

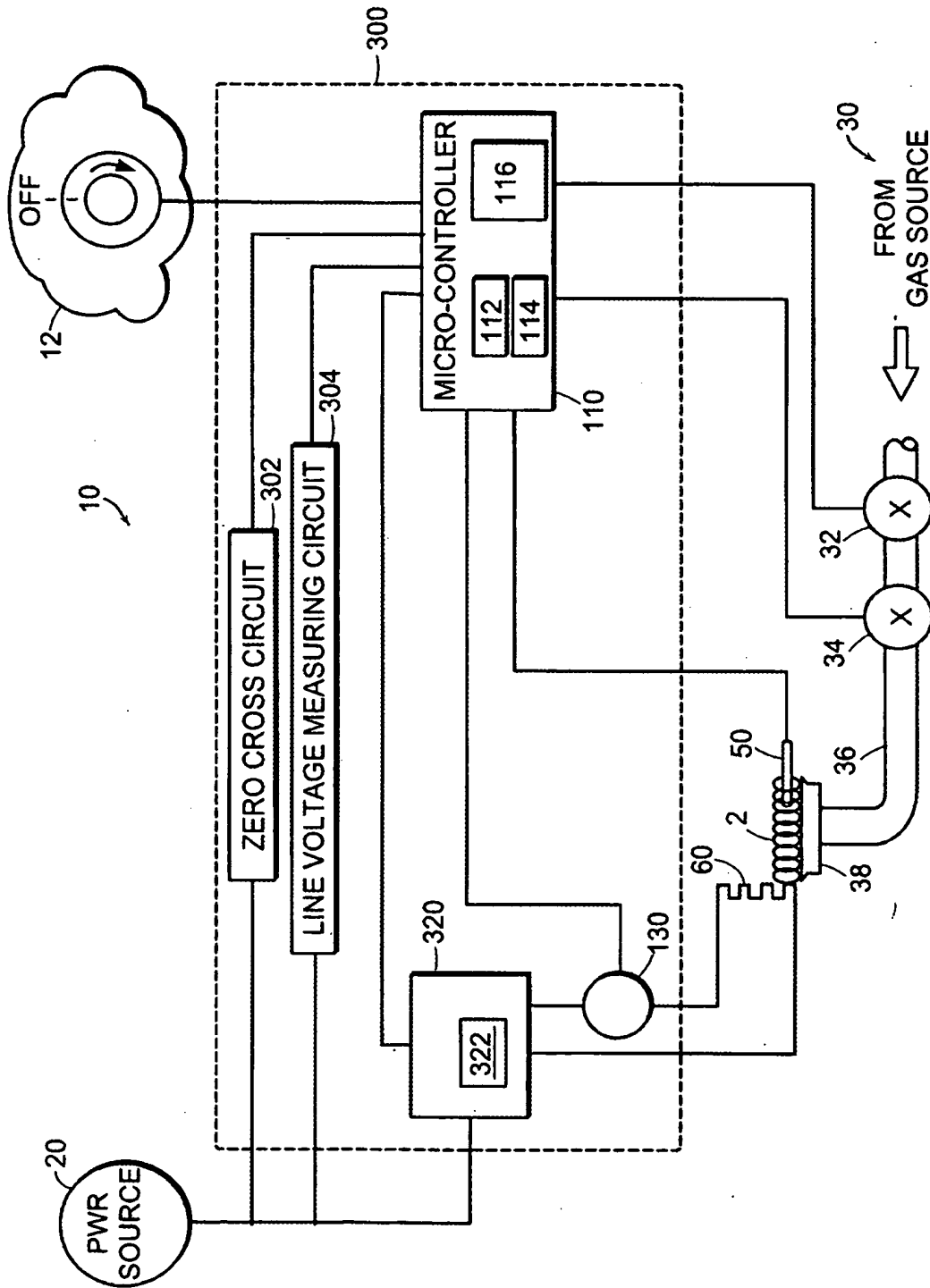


FIG. 4

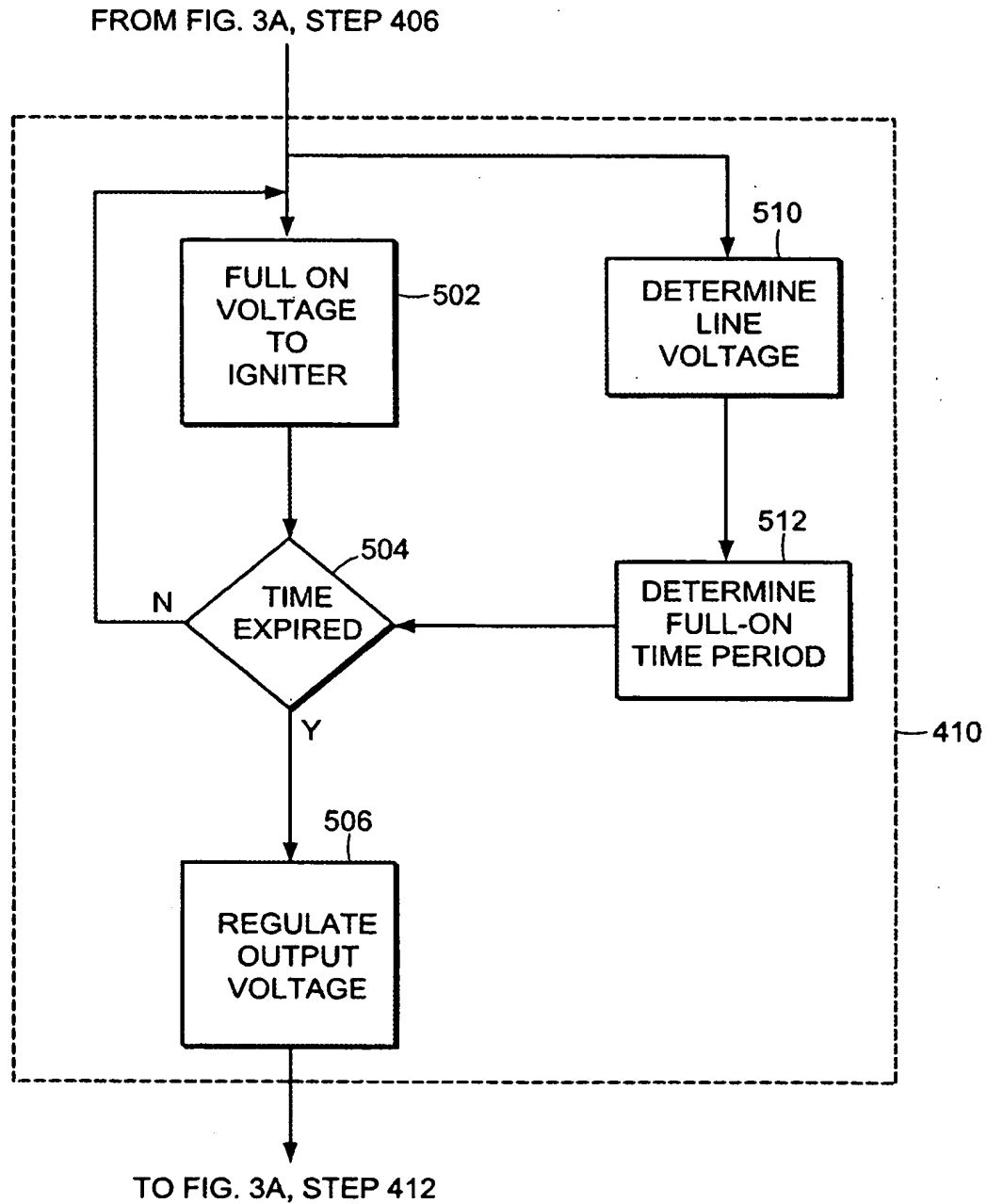


FIG. 5